

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

DAVID G. FELDSTEIN, Pro Se,)	Civ. No. 05-00664 HG-BMK
)	
Plaintiff,)	FINDINGS AND
)	RECOMMENDATION TO
vs.)	DENY PLAINTIFF'S MOTION
)	FOR DEFAULT JUDGMENT
MS. SAM FINN, Regional Director,)	
Honolulu Passport Agency,)	
)	
Defendant.)	
)	

**FINDINGS AND RECOMMENDATION TO DENY PLAINTIFF'S MOTION
FOR DEFAULT JUDGMENT**

On October 20, 2005, Plaintiff David G. Feldstein, proceeding pro se, filed a Complaint against Defendant Sam Finn. Plaintiff served the Complaint upon Defendant and the United States Attorney's Office on December 1, 2005. On December 28, 2005, Plaintiff filed a Request to Clerk for Entry of Default and a Motion for Judgment by Default by the Court. Plaintiff's Motion was heard on February 16, 2006.

Plaintiff requests that the Court and the Clerk's office enter judgment in his favor and find that Defendant's denial of his passport application to be unlawful, null and void, and of no force and effect. Plaintiff declares that because Defendant failed to file an answer to the Complaint within twenty days

as required pursuant to Rule 12 of the Federal Rules of Civil Procedure (“FRCP”), he is entitled to default judgment.

According to FRCP 12(a)(3)(A) however, the United States, an agency of the United States, or an officer or employee of the United States sued in an official capacity has sixty days after the United States attorney has been served to file a responsive pleading and thus, in this case, Defendant had until January 30, 2006 to file a response. Although it is past the deadline to file a responsive pleading, on January 30, 2006, Defendants timely filed a motion to dismiss the Complaint for a failure to state a claim pursuant to FRCP 12(b)(6) thereby tolling the time allowed to file an answer to the Complaint. Fed. R. Civ. P. 12(a)(4). Because the Court FINDS that Defendant has not violated Rule 12 for failing to file an answer, the Court RECOMMENDS that Plaintiff's request for default judgment be DENIED.

IT IS SO FOUND AND RECOMMENDED.



/s/ Barry M. Kurren
United States Magistrate Judge
Dated: February 16, 2006

David G. Feldstein v. Ms. Sam Finn; Cv. No. 05-00664 HG-BMK; Findings And Recommendation To Deny Plaintiff's Motion For Default Judgment